

Centre for the study of
Emotion & Law

Annual Report *2012-2013*



*“Science and technology revolutionise our lives;
memory, tradition and myth frame our response.” - Arthur M Schlesinger*

2012–13: A year of establishment

Jane Herlihy and David Rhys Jones review CSEL's successes and challenges over the last year

2012 has been a year of both change and stability for CSEL.

In June we moved from the charity centre in Finsbury Square to Chancery Lane which has been associated with the law since the 12th century. Our new office in Quality Court, formerly the Old Patent Office built in 1760, is somewhere we can mature and grow.

Our Board of Trustees has also moved on. CSEL's co-founder, Stuart Turner, stepped down as Chair of Trustees in February. Stuart retains an advisory role, helping us with future research development. David Rhys Jones has stepped into Stuart's shoes as acting Chair of Trustees, bringing valuable expertise and experience in the field of human rights and asylum law. David's area of specialism is access to justice for vulnerable persons.

David is delighted to act as our Chair of Trustees while we actively identify candidates. We will soon publish a description of the role and a person specification on our web site. If you are interested in the meantime please contact the Recruitment Sub-Committee at CSEL via the Director. We are also looking for a trustee with a particular interest and background in fundraising and are open to expressions of interest in that area too.

Our funders continue to show great faith in us. Firstly, Comic Relief encouraged us to apply for a second three-year grant which will enable us to roll out our dissemination work to include the training of lawyers. See pp.16 for more details. At the same time, our largest funder, Unbound Philanthropy, invited us to apply for continuation funding. They have now granted us significant funding taking us into 2016, an endorsement which gives us the confidence to approach other funders. We

consider that CSEL is now sufficiently stable, despite all the changes to legal aid provision and pressures on decision makers, to be able to continue to provide high quality evidence to strengthen the quality of decisions made about people seeking international protection. Unbound Philanthropy's confidence and trust in us has already borne fruit in helping us secure continuation funding from Samuel Sebba Charitable Trust, who are supporting our research work for a further two years.

Last year's audit of our finance management systems by MHA MacIntyre Hudson provided a meticulous examination of our financial reporting systems and has allowed us to develop more efficient working methods (after a steep learning curve) in which we and our funders can have full confidence. Our thanks to Peter Gotham's team for their generosity in time, patience and support.

Our external communications profile has also grown this year and we are steadily getting to grips with social media. We have a presence on Twitter ([@CSEL_UK](https://twitter.com/CSEL_UK) – do follow us!) tweeting not only to announce CSEL publications and events, but to bring our name to the attention of a wider audience in connection with psychological evidence and key developments in the field. Thanks to our Comic Relief funding we will be taking on a Media & Communications assistant next year.

In the winter we ran a seminar series with the [Refugee Law Initiative](#), at the Human Rights Consortium of School of Advanced Study, University of London. The seminars brought together psychologists, psychiatrists, lawyers and decision makers to think about research and practice around the topics of decision makers and psychological evidence, trauma and refugee integration, psychology and

asylum seeking children, and trauma and credibility. Audio podcasts of some of the presentations are available online on the RLI website.

We held our first major in-house event in 2012: *Facilitating Justice*, which brought together practitioners from the violence against women sector and the refugee community world to share ideas and concerns, and strengthen the ties between these sectors, which overlap significantly in the focus of their work, but often don't get to think together about solutions. You can read more about the event on page 14.

Facilitating Justice closed the Dissemination Project for Women, for which we also published a training toolkit in 2012. This has been designed to enable those supporting vulnerable women seeking asylum to train themselves to understand two of CSEL's research papers. Copies are available from the office, or can be downloaded from our website.

Finally, one of our biggest achievements for 2012 has been our work providing expert advice to the CREDO project: *Beyond Proof: Credibility Assessment in EU Asylum Systems*, co-ordinated by the Hungarian Helsinki Committee and implemented together with its partners the UNHCR European Bureau, the International Association of Refugee Law Judges, Asylum Aid, and the Hungarian Helsinki Committee. See p15 for more.

This year we began work to move our website onto a new management platform so we can keep it up to date far more easily, both in terms of our own events and research, and also other psychological research relevant to lawyers and decision makers. Following a

meeting at Queens University, Belfast in March 2013 (See Dissemination p7) we have begun to explore using this expanded platform to provide a European repository for Emotion and Law resources – a place where scholars who research and write about the different roles that emotion plays in law and decision making can share ideas and resources.

In 2013-14 we hope to develop new research projects, to continue to elucidate the psychological mechanisms at play in decision making about adults and children seeking justice and protection. *Evidence into Practice* will continue to take our work to lawyers and hence to decision makers looking for new focused approaches to psychological evidence at a time of significant cuts in legal aid funding. We are also looking forward to seeing what our new role in the world of Emotion and Law scholarship will bring.

Many thanks to our funders and to all our supporters for their continued encouragement through creative and practical help over the last year, and thank you in advance for your help with our exciting future plans.



Dr. Jane Herlihy



David Rhys Jones

Cover image: Sarah Jane Le Clerc, flickr.com

Moving on...

Stuart Turner hands over the baton as Chair of Trustees

“The Centre for the Study of Emotion and Law has come of age. When Jane Herlihy and I first decided to establish an organisation to investigate the psychological basis for assumptions made by judges and other decision makers about the stories they heard, it felt as if we were very much on our own. Fortunately my medico-legal practice in the Trauma Clinic meant that I could support this project financially. Soon we had gathered a group of very eminent advisers and when we were ready to establish CSEL formally, I agreed to become chair of trustees – until CSEL was ready to stand alone. That time has now arrived.

“CSEL is now an established and respected organisation providing high quality primary and secondary research to support fair and just decision making, initially in the asylum field but with plans to extend its work into other areas. It is now financially independent of the Trauma Clinic and has been able to attract support from a wide range of funders. There is a great body of trustees, of all the talents, and I am delighted that David Rhys Jones has agreed to continue as acting chair for the time being. Crucially, Jane has proved to be an outstanding director. Perhaps even more important than her academic excellence is her ability to communicate effectively at so many different levels with others in the field. Jane and I plan to continue to work together, and I look forward with pleasure to active collaboration in some of the research work within CSEL, but the time has come for me to step down as trustee. I feel very much like a proud parent seeing his child off to university. I am confident in the future of CSEL and I wish the organisation well for the future.”



Dr. Stuart Turner speaking at the ISTSS 2009

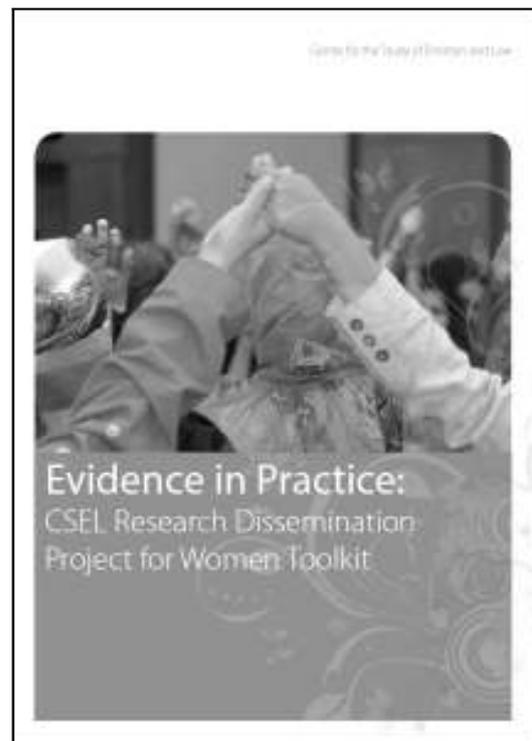
Publication

In 2012-13 CSEL published two important new papers - on autobiographical memory, and on lay commissioning of medico-legal reports, both of which have attracted a great deal of interest - and a training toolkit based on our women's research dissemination project. Jane Herlihy presented a paper on emotion and law at Queen's University, Belfast, and at the end of the year two new papers were in press - on over-general memory, and on the presentation of PTSD symptoms.

The asylum process relies on people being able to give a convincing account of experiences in their past. 'Just Tell Us What Happened To You: Autobiographical Memory and Seeking Asylum' by Jane Herlihy, Laura Jobson and Stuart Turner, in *Applied Cognitive Psychology* reviews the scientific literature on autobiographical memory, looking at how it works, and the effects on our ability to recall events of emotion, emotional disorder, and the different forms of memory in different cultures. For more on this, see Lily Parrott's article on p13.

'Non-Clinicians' Judgements About Asylum Seekers' Mental Health: How Do Legal Representatives of Asylum Seekers Decide When to Request Medico-Legal Reports?' by Lucy Wilson Shaw, Nancy Pistrang and Jane Herlihy was published in the *European Journal of Psychotraumatology*. This study examined the decision making of immigration lawyers, who, without formal clinical training, have to decide when to commission an assessment of their client's mental health. David Rhys Jones discussed the findings in an article for the *Freemovement* immigration website - you can read his article on p12.

'What Do We Know So Far About Emotion



and Refugee Law?' by Jane Herlihy and Stuart Turner in the *Northern Ireland Legal Quarterly* was the result of a relationship with the law department at Queen's University, Belfast, who are working to bring together scholars in the Emotion and Law field in Europe. In their article, Herlihy and Turner review the psychology literature in refugee law, and set it in the context of the larger body of Emotion and Law work, already well-developed in the United States, but still nascent this side of the Atlantic.

All three papers are available through the publications section of the CSEL website.

This year, Professor Chris Brewin has published a number of papers on the issue of flashbacks and dissociation, including the first experimental study showing how dissociation adversely affects memory encoding: Brewin, C.R., Ma, B.Y.T., & Colson, J. (2013). Effects of experimentally induced dissociation on attention and memory. *Consciousness and Cognition*, 22, 315-323. A full list of Professor Brewin's published papers is [available online](#).

At the end of the Dissemination Project for Women we published *Evidence in Practice*, a toolkit for people working with vulnerable women seeking asylum. The toolkit extends the

reach of the three-year project by allowing those working in a support capacity to train themselves to understand and make use of two of CSEL's key research papers: 'Discrepancies in Autobiographical Memories - Implications for the Assessment of Asylum Seekers: Repeated Interviews Study', Jane Herlihy, Peter Scragg, and Stuart Turner (British Medical Journal) and 'Disclosure of Sexual Violence in Home Office Interviews', by Diana Bogner, Jane Herlihy, and Chris Brewin (British Journal of Psychiatry).

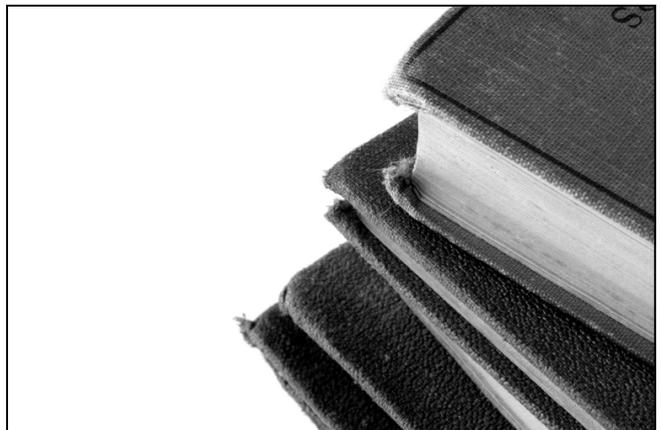
The toolkit is designed to be accessible and easy to use, includes explanations of PTSD symptoms, and signposts users to other papers and resources available online. Copies of the toolkit are available on request from CSEL, or can be downloaded from the dissemination resources section of our website.

CSEL researchers submitted two papers for review and publication this year. The phenomenon of over-general memory - where people are unable to produce specific memories of their past - is well known in studies of people with depression and PTSD. A paper by Belinda Graham, Jane Herlihy and Chris Brewin concludes that it is also a problem for asylum seekers with PTSD, and raises the question of how a failure to give specific details is dealt with in the asylum process. With some forms of PTSD, people can look as though they're lying.

An experimental study by Hannah Rogers used videos of an asylum account and asked student 'decision makers' to make credibility judgments. Like the immigration lawyers in Lucy Wilson-Shaw's study, they were good at recognising fear-based PTSD, but an applicant showing fewer signs of fear, or features of lying confused their judgments.

These papers will be available through our website as soon as they are published.

CSEL's work continues to be valuable to other organisations concerned about fairness in refugee decision making, and this year our work was cited by, amongst others, the [Refugee Law Reader](#) (a major worldwide reference for refugee lawyers), Freedom From Torture in their report "'We will make you forget everything": Torture in Iran since the 2009 elections'; 'Challenging Times in Asylum and Immigration Judicial Review: Is The System Stretched to Breaking Point?' by Sunniva McDonagh, Sinead Costello and Imelda Kelly (Irish Bar Review, December 2012); and *Frontline* Spring 2012, the Law Centre (NI) social welfare law quarterly. We're glad to see our work reaching and proving useful to an ever wider audience.



Pic: Simon Lawrence, Dreamstime Stock Photos

Dissemination

Over the last year CSEL staff have travelled far and wide, in the UK and overseas, to present at conferences and deliver training and seminars. Jane Herlihy delivered training to GPs in

Coventry on writing medico-legal reports, to staff and volunteers at BID UK, a charity advising on bail issues for immigration detainees, to Freedom from Torture and to candidates for the Doctorate in Clinical Psychology at Exeter University. Jane and Raggi Kotak of 1 Pump Court delivered the annual training seminar to members of the Immigration Law Practitioners Association on using CSEL research in preparing claims for asylum and appeals. Emily Rowe at Freedom from Torture reports that staff writing medico-legal reports are now routinely directed to read 'Just Tell Us What Happened to You'.

A highlight of this year was CSEL's Psychology and Refugee Protection seminar series organised with the Refugee Law Initiative. The four seminars in the series included lectures on Decision-makers and Psychological Evidence with Professor Anthony Good, Dr Jane Herlihy and discussant Judge Mark Ockelton; Trauma and Refugee Integration, with Mary Robertson, Dr Kate Thompson and Indira Kartalozzi, and discussant Myriam Cherti; and Psychology and Asylum-Seeking Children, with Professor Bill Yule and Dr Kim Ehntholt. Jane chaired the last lecture in the series, on Trauma and Credibility, with presentations by Professor Chris Brewin who talked us through what memory research has shown us so far (and



Pic: Mike Mertz flickr.com

what it hasn't) and Dr Stuart Turner, who talked about memory in the asylum process, particularly for people who have experienced traumatic events. Senior Immigration Judge Catriona

Jarvis gave her responses to the speakers, raising questions and encouraging the audience to think about the implications of the research for decisions about asylum applications. A lively discussion between the speakers and questions from the floor took us from certainty in decision making through legal aid cuts, to the treatment of children in the asylum process. The seminars were well attended with interesting discussions leading to new areas of enquiry, and they provided an exciting chance for CSEL to make new connections with academics and practitioners interested in our work. We are now developing plans for new research work arising from issues raised in the post-lecture discussions, and look forward to reporting on this in 2014.

In May CSEL's work on gender was recognised in an invitation for Jane to join a roundtable series at the annual meeting of the [Law and Society Association](#) in Honolulu. The meeting marked the launch of a new three-year research project that will map the ways that refugee law has been transformed by considerations of gender. The conference was an important opportunity to network with a mixture of academics, practitioners and campaigners, and to reconnect with fellow researchers and scholars including Sharon Cowan and Mike Kagan. Others presenting at the conference included Audrey Macklin, member of Canada's

Immigration and Refugee Board and Professor & Chair in Human Rights Law at the University of Toronto, Deborah Anker, Harvard Clinical Professor of Law, and Director of the Harvard Immigration and Refugee Clinic, Debora Singer from Asylum Aid and Maria Hennessey of ECRE (the European Council on Refugees and Exiles). The conference discussions will be brought together in a book on refugee law to which CSEL is contributing a chapter in late 2013.

In October Jane was invited to speak at the Irish Refugee Council's conference on Credibility in International Protection Claims. She spoke alongside Professor Guy Goodwin Gill of All Souls, Oxford, and Rosemary Byrne of Trinity College, Dublin to an interested audience of lawyers, clinicians, UNHCR staff and decision makers about the importance of understanding post-traumatic responses and the use of psychological evidence.

In November, Clare Cochrane presented the work of the women's dissemination project and Facilitating Justice to the Why Refugee Women conference in Bradford. Why Refugee Women is a self-organised advocacy project run by and for women seeking asylum, founded by Beatrice Botomani, herself a refugee. Natasha Walter, founder of Women for Refugee Women spoke to thank Why Refugee Women for contributing to the powerful report *Refused: the experiences of Women Denied Asylum in the UK*. Conference participants were inspired by the activities that have come out of Facilitating Justice – of which more on p.14.

Finally, in March 2013 Jane presented a paper at the [Queens University, Belfast](#) conference on Emotion and Law – the paper, 'What do we know so far about Emotion and Refugee Law?', published in the spring issue of the Northern

Ireland Law Quarterly, is available through our website. Discussion at the conference led to a plan to develop a resource hub through the CSEL website for European work on Emotion and Law. This is an increasingly well-developed area of multidisciplinary enquiry in the USA that is only just beginning to be explored more deeply in Europe, and we're excited to be working with other interested scholars at the leading edge of this developing field of academic work in the UK and Northern Ireland.



Pic: Radhu Razvan Gheorge, Dreamstime Stock Photos

Outreach

Although we do our own primary research and disseminate it through our own training and dissemination programmes, our role in the refugee sector is expanding into consultation and support for key organisations working in different ways for justice and quality decision making. As well as speaking at conferences and seminars, and delivering our own training, we work behind the scenes with various organisations and individuals bringing academic rigour to support the accuracy and effectiveness of their work. Through CSEL's dual remit of research and dissemination, we have built relationships with individuals and organisations in the different worlds of academia and the voluntary sector, and this year we've worked with others in all these fields in a variety of capacities, in varying degrees of formality.

One of the key organisations to whom we offer consultation is the UK Border Agency. Jane met with training and quality personnel throughout the year to advise on the design and content of their training courses for case owners across the UK. Clare worked with Asylum Aid to offer input into the design of UKBA training videos for case owners learning to implement the UK Border Agency's gender guidelines and improve interviewing techniques.

In May, Jane went to Switzerland to make a training film with other members of the team from the Psychology, Mental Health & Law project on Integrating Psychological Knowledge into the Khmer Rouge Trials. The film is not intended for general release! Rather it will be used to help to improve the psychological knowledge and understanding of lawyers and their ability to apply this knowledge in their work.

Gender Action for Peace and Security ([GAPS](#)) approached CSEL for input into their contribution to the Government's Preventing Sexual Violence Initiative. This initiative, launched in 2013 by William Hague, is run by the Stabilisation Unit which comprises the Foreign and Commonwealth Office, the Department for International Development and the Ministry of Defence, and aims to combat and prevent sexual violence in conflict. GAPS is a working group that brings together development, humanitarian and peacebuilding NGOs to monitor policy and practice on peace and security through a gender lens.

Throughout the year Jane continued to provide academic support to [Asylum Aid](#), and we are grateful in return for their support as policy experts with practical legal knowledge in the refugee-supporting voluntary sector. Our formal and informal relationships with the voluntary sector are important to us, and ensure that CSEL's research findings are disseminated to a wider audience beyond academia.

"We have used CSEL research in our seminars to improve our stakeholders' understanding of credibility and women's asylum stories, and to emphasise the need for mental health support and multi-agency responses to disclosures of rape and torture."

Emily Robertson, Swansea City of Sanctuary

“A Country Guidance Case of the Mind”

Barrister Jo Wilding gives an account of using CSEL’s research in a recent appeal case, and its reception by the Court

It is all too common, in asylum cases, to have an applicant disbelieved because there are inconsistencies in their account and the UK Border Agency caseworker has made an assumption that it is “reasonable to expect you to remain consistent about such a key detail of your claim.”

In a recent case my client had been detained twice, once briefly and once for a longer time. He had been tortured but in ways which did not leave physical scars. He was able to say roughly when he was detained and exactly what date he was released. He was completely unable to say how long that period had been. He said, in the various interviews and statements, about a year, four months, four months and two weeks, and forty days. He was also unclear about whether the place he was released from was a court within the detention camp or merely a room.

His asylum application was refused in part because it was expected that, if his account were true, he would have been consistent about what the caseworker considered to be a “key detail” such as the length of his detention.

A very thorough psychiatric report diagnosed him with post-traumatic stress disorder and depression and also a history of alcoholism and detailed a specific plan for suicide using agricultural chemicals if he were forced to return to his home country. The psychiatrist noted that it was impossible to say with certainty that any one or all of those factors did account for the inconsistencies in my client’s testimony. This was because of the difficulty in his view of applying the general proposition that a person had a condition capable of affecting memory, to his behaviour at any specific moment, such as in an asylum interview.

For his appeal to the First Tier Tribunal I also submitted a paper by Dr Juliet Cohen explaining how inconsistencies in asylum seekers’ accounts should not necessarily be treated as undermining their credibility.

The judge accepted that there were various factors which could be affecting my client’s memory but went on to say that, if the client was mistaken, it was difficult to know what to believe and what not to believe. He thought the different accounts of the length of detention were impossible to reconcile, despite the client knowing roughly when he was detained and exactly when he was released and he dismissed the appeal.

Permission to appeal to the Upper Tribunal was granted but the appeal was again dismissed. We appealed to the Court of Appeal. Permission was granted by Sir Stephen Sedley, posing what he described as the “difficult but real question about how a fact-finder should assess a history given by a constitutionally labile individual; is it enough to find it unreliable (...) when there is evidence that the unreliability may itself be the result of trauma?”

To answer the question Sir Stephen Sedley had posed, I compiled a 70-page bundle, mainly comprising Dr Cohen’s paper and three papers from CSEL researchers. These were Herlihy, J. and Turner, S. (2006) *Should discrepant accounts given by asylum seekers be taken as proof of deceit?*, Herlihy, J., Scragg, P and Turner, S. (2002) *Discrepancies in autobiographical memories – implications for the assessment of asylum seekers: repeated interviews study*, and Bogner, D., Brewin, C. and Herlihy, J. (2010) *Refugees’ experiences of Home Office interviews: a qualitative study on the disclosure of sensitive personal information.*

I relied on those papers to argue that the court should give guidance on the best available evidence on traumatic memory, summarising the principles from the CSEL research as follows:

- The assumptions made by decision makers about what an asylum seeker should remember if telling the truth are simply wrong and not based on any evidence;
- What decision makers consider to be “key details” such as dates are, in traumatic memory terms, peripheral details and unlikely to be recalled;
- Traumatic memories contain more errors in peripheral details than non-traumatic ones;
- Traumatic memories are fragmented and often not encoded in a way which allows coherent and consistent recall;
- A number of factors can affect recall and testimony including the attitude of the interviewer and interpreter and the mood of the interviewee such that an incident may not be disclosed or may be differently described on different occasions.

Two days before the Court of Appeal hearing the Home Office conceded the appeal to the extent that it would be sent back to the Upper Tribunal for a rehearing. The Court of Appeal judges, giving directions, likened it to “a country guidance case of the mind” and expressed the view that the President of the Tribunal should be invited to consider the constitution of a panel to hear the appeal. Two days before the rehearing in the Upper Tribunal, the Home Office granted my client asylum. This is extremely unusual when there is an appeal pending and meant that there was no appeal to be heard. While it was a



great outcome for my client and his family, who can now apply to be reunited with him, it was frustrating that the evidence on traumatic memory was not going to be heard and that the present practice of condemning traumatised people as liars because they don't meet a caseworker's unfounded assumptions is being allowed to continue.

I am however extremely grateful to CSEL and its researchers for providing evidence which can be used to challenge those assumptions and still hope some evidence-based guidance will eventually be introduced via case-law to challenge the pervasive cynicism of some decision makers.

Lay Assessments of mental Health: Dangerous Territory

David Rhys Jones discusses Lucy Wilson-Shaw, Nincy Pistrang and Jane Herlihy's paper Non-clinicians' judgements about asylum seekers' mental health: how do legal representatives of asylum seekers decide when to request medico-legal reports? This article first appeared on the [Free Movement](#) immigration law news blog in November 2012, reprinted here with thanks.

Legal aid restrictions mean that speculative medico-legal reports are out of the question but gauging one's clients' mental health is important for a number of reasons. Credibility invariably plays a part in applying the legal aid merits test, for example. Does poor mental health assist in the documentation of trauma which, in turn, corroborates allegations of past persecution? Is the client fit to be interviewed or give evidence? How will s/he bear the court process generally? Do mental health issues go to articles 3 and/or 8 when considering return?

Paragraph 208 of the [UNHCR Handbook](#) states that, in cases concerning applicants with mental or emotional disturbances, "[t]he examiner should ... whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfil the requirements normally expected of an applicant in presenting his case..." UKBA, however, expects the applicant to commission such reports. Interviews conclude with a warning that if such evidence is not provided within five days a decision may be made without it. Failure to obtain such medical evidence is then often taken by UKBA as evidence that the claimed medical issues do not exist.

Much therefore hinges upon a legal representative's ability to accurately assess such 'mental or emotional disturbance'. But lawyers are not doctors. How well equipped are they to decide whether or not to instruct a medical expert? The legal representatives interviewed for the study were highly experienced and motivated lawyers, most of whom had received training about mental health issues and all of whom appear to have demonstrated a marked degree of empathy. However, one of the most striking findings of the study was that legal representatives in this study were making decisions about the presence of mental health problems in their clients based on their lay

knowledge of mental illness and their own responses to the presentation of the client, including 'gut instinct'. There is an important side issue here: where do those 'gut instincts' come from? To what extent is the decision process driven by the psychological well being of the interviewer on the day? Hearing such testimony over time may well have an effect on anyone. Feeling overwhelmed by a suicidal client, for example, may drive a referral but also highlights important self-care needs. One need not become 'case-hardened' or 'a soft touch' if proper support is available.

Most asylum lawyers keep some sort of 'PTSD check list' in mind following the plethora of case law on the subject (AE & FE, HE DRC, HK, HH Ethiopia, Y Sri Lanka) but this report reveals that apparently 'obvious signs' are invariably no substitute for professional diagnostic skill. Indeed, the absence of such signs was perceived by some as indicating no mental disturbance or even that their client was being untruthful. This is critical since 'lack of credibility' often plays a part in the decision to decline funding on the grounds that the case lacks merit. Furthermore, while some signs of PTSD were clearly identified by lawyers in the study, other mental health issues such as depression were missed, or ignored on the basis that the presentation of such evidence to the courts would have little or no impact upon the outcome. Legal representatives did recognise that PTSD was likely to be 'weighed in the balance' by judges, but perceived that 'mere' depression was not. As the authors point out, however, depression frequently has a significant impact upon the nature of and capacity to recall; often a crucial factor in many cases.

This paper has important lessons for legal practitioners, medico-legal report writers, and decision makers also. The study may also demonstrate a critical role in the asylum procedure for appropriately trained and experienced clinicians.

Memory and the Asylum System: Reality or construction?

Following CSEL's publication of *Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum* by Jane Herlihy, Laura Jobson, and Stuart Turner, **Lily Parrott** discusses how the nature of memory poses a central challenge to refugee status determination processes based on credibility assessment.

"A refugee claim should not be decided on the basis of a memory test" (Federal Court of Canada in: *Refugee Status Determination and the Limits of Memory*, Cameron 2010)

When applying for asylum, the process of refugee status determination (RSD), where the asylum seeker attempts to demonstrate how she credibly and plausibly fits the criteria of a refugee, rests almost completely upon the story told by the asylum seeker. Due to its reliance on autobiographical memory, or the explicit memory of events that occurred at a specific time and place in one's personal past, it can be said that RSD is based upon unreasonable expectations of memory. Memory is often assumed to work like a video recording of the past, but it is more accurately represented as a functional reconstruction subject to distortion, decay and false remembering. *Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum* reviews the 'shortcomings' of memory, how they may not be failings after all, and their effect on RSD.

A pivotal reason autobiographical memory falls short of expectations may be due to its actual, rather than perceived, functions. Memory researchers have concluded that the functions of autobiographical memory are: developing and maintaining social bonds; directing thought, feeling and behaviour using the past as a guide; and assisting in the definition and expression of self and experience of personhood. Accuracy, then, is secondary – and may sometimes be a disadvantage ---- to the purpose of autobiographical memory. Memory's reliance upon schemata, or generalised composites of repeated events such as going shopping for food, supports this conclusion.

Furthermore, studies have shown that memory for dates, frequency, duration,

sequence of events, properties of common objects, regularly occurring events, proper names, peripheral details, and exact content is 'inaccurate at best' and highly variable. Yet there is a widely held assumption that autobiographical memory is reliable and consistent, even though it decays over time. This creates problems for credibility, as consistency and detail in testimonies are assumed to indicate truth.

During RSD, many of the asylum seekers' stories relate traumatic events, but the heightened emotion experienced during trauma may inhibit recollection, especially for details not focussed on at the time. Traumatic memories are dominated by sensory and emotional 'snapshots' rather than narrative structures, like standard memories, making them difficult to disclose. Depression, moreover, can result in recollection of generalised memories and so can also decrease apparent credibility.

The paper also touches on the role of culture, a particularly relevant field with under-addressed implications for RSD. Culture shapes the relationship between the self and others, and so autobiographical memory has a big role to play. In cultures that value interdependence rather than independence, from which most refugees originate, retrieving specific, individualised autobiographical memories is not an important objective of memory.

The evidence suggests that decision-makers should not assume that some memories are so important that they cannot be forgotten, or that if testimonies contain inconsistencies they should not be considered credible.

Although it is hard to imagine how an individual's well-founded fear of persecution can be assessed without hearing their account of their past, the only conclusion we can reach is that these crucial decisions about people's lives must be made in the light of evidence-based knowledge about how we remember our past.

Facilitating Justice: Diversifying Support for Women Seeking Asylum

In ecology, zones where two ecosystems meet are seen as presenting both challenges and opportunities, and as a result are places where potentially new ecosystems can emerge. As its name suggests, CSEL has the potential to facilitate the creation of such zones of diversity.

In September we tested this ideal with our event Facilitating Justice (funded by Comic Relief as part of the Dissemination Project for Women). The event brought together practitioners in asylum-support organisations and violence against women support groups, and women with experience of seeking asylum. Designed to be more than a talking shop, discussion groups and workshops were carefully facilitated to encourage conversation about practical solutions.

First we heard a series of short presentations. Dr. Vicky Canning of Liverpool John Moores University talked about her work tracing the intersections of violence and gender in conflict. Eileen Walsh from the [Traumatic Stress Clinic](#) explained how psychologists support and treat women with post-traumatic stress following sexual violence. Nyasha Kajawu, formerly of the [Refugee Council](#)'s asylum-seeking women's therapeutic programme, talked about their model of integrated therapeutic and advocacy support. Finally Nina Murray and Elaine Connelly of [Scottish Refugee Council](#) took us through their project mapping the needs of asylum-seeking women, describing how refugee women were involved, how the project worked across sectors, and how it is now influencing changes in service provision in Scotland.

The workshops that followed provoked rich and interesting conversation, and resulted in a very practical list of actions that either or both violence against women and asylum-supporting organisations can take to improve access to specialist services for vulnerable women seeking asylum. Ideas included joint working between Rape Crisis and refugee support groups; training swaps; more women-only services for refugee women; and diversity training and strategy development for sexual violence support organisations. At the end of the day,

participants pledged to follow up on at least one action point. Jane Herlihy and Amina Memon led an additional workshop looking at the need for new research to improve what is known about women seeking asylum, and start to identify new research questions. Despite the very challenging economic environment for small organisations, within 10 days of holding the event, two participants reported that they had begun work on their action points; and within just a few months one of the participants had set up a new women's drop-in at her asylum support service.

An important feature of the event was the participation of women with experience of going through the process of seeking asylum. By ensuring that 'experts by experience' were able to take part, the conversations remained grounded in reality and never lost sight of the ultimate aim: to improve access to support for refugee women with experience of violence. Our thanks to the Feminist Review Trust for funding travel bursaries for refugee women.

Facilitating Justice has inspired further changes: one participant has begun work for a violence against women charity in London where, inspired by Facilitating Justice, she tells us, she has already set up new referral pathways and cross-sector partnerships to help refugee women access specialist sexual violence support, developing cross-sector work to ensure that refugee women don't fall through the gaps in specialist sexual violence service provision.

By Clare Cochrane



Pic: Centre for the Study of Emotion and Law

The CREDO Project: Reaching Decision Makers in Europe

At CSEL we aim to disseminate our research both to those who can use it to inform individual decisions, and also to those who design the policies and guidance on implementation of refugee and international protection laws. In this dissemination work we promote any relevant good quality, peer-reviewed psychological research which can help to inform decisions made about those in need of protection. This approach has resulted in opportunities to work in interesting partnerships on innovative projects – such as the [CREDO project](#) to improve credibility assessment in asylum decision making across the European Union.

As the European Union moves towards common policies for people seeking protection, member states have identified a need to develop better structured, objective assessment practices, and ensure that, just as policies are “harmonised”, so are minimum high standards of decision making about protection. The CREDO project was designed to bring this about by identifying best practice and shortcomings in credibility assessment across different European states, and, significantly, taking a multidisciplinary approach. The project has been led by the Hungarian Helsinki Committee ([HHC](#)) in collaboration with UNHCR Regional Bureau for Europe ([UNHCR](#)), the International Association of Refugee Law Judges ([IARLJ](#)) and Asylum Aid. Research assistants working in the UK, Belgium, the Netherlands and Sweden observed practice and interviewed practitioners.

CSEL has been involved at various stages of the project in an expert scientific advisory capacity. During development of the research phase of the project UNHCR approached CSEL to advise on research methodology, and to work with the UK research assistant Mohbuba Choudhury to formulate and refine interview questions. Towards the end of the project Jane Herlihy worked on the final draft of the project report, *Beyond Proof: Credibility Assessment in EU Asylum Systems*. CSEL’s role was to add references to psychological studies and draw on scientific evidence to provide clarifications of some of the crucial psychological processes at work in the

assessment of credibility. In particular we drew heavily on the studies we had reviewed for our memory paper, “Just Tell Us What Happened”, explaining what can and can’t be relied on when asking people to give accounts of their experiences and substantiate their claims (for more about the memory review paper, see p.13).

CSEL’s work advising on the CREDO project has led to further collaborations with CREDO partner organisations. The memory review material will be used by us to contribute a chapter on “Memory and its Limitations” to a manual for asylum decision makers across Europe, part of a training programme of the HHC. CSEL has also been invited by the IARLJ to comment on the association’s paper *Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive - Judicial criteria and standards*, which will feed into their training programme for judges and other decision makers across Europe. The CREDO project has proved significant to the development of CSEL in a number of ways. Our work with this international project is an important marker of mainstreaming of the contribution that psychological research can make to every aspect of the asylum decision making process. The project has been an exciting opportunity for CSEL to extend our reach internationally, to work with high profile, influential partners. As a small research centre we could not have achieved this level of awareness of our work among this audience without working in partnership, and we’d like to thank UNHCR for giving us this chance to take our research to decision makers across Europe in such a focused and efficient way. For CSEL itself, the project has enabled a transition from working on trauma and memory, to working on the psychology of memory more generally, and its implications for the fairness of asylum decision making. At its heart, the asylum process turns upon people describing their lives to other people – precisely the business of psychology, whether or not we look to properly peer-reviewed scientific evidence to understand it.

By Jane Herlihy

Evidence into Practice

Clare Cochrane introduces CSEL's new dissemination project

CSEL's twin aims of conducting and disseminating research together form the strategy by which we aim to fulfil our mission: to improve the fairness of legal processes for vulnerable and oppressed people, through bringing psychology into decision making. In 2009 we began the Comic Relief-funded Dissemination Project for Women, a programme of training seminars that aimed to get our research findings into the hands of frontline practitioners, people working in the voluntary sector to provide support directly to women seeking asylum. Now Comic Relief have awarded us a new grant for new training to take our research findings to legal practitioners.

Through the Dissemination Project for Women we learned that, in addition to further training for practitioners in the wider voluntary sector, we need to offer training specifically for legal representatives. Support workers can – and do – put our research findings into the hands of lawyers working with vulnerable women seeking asylum; but the asylum lawyers are working under unique pressures and constraints of too little time and ever-diminishing funding for casework.

A legal professional will form a different relationship with an asylum-seeking client from a support worker or volunteer. Typically, they meet their clients at different stages in their process of claiming or appealing a refused claim, and they have particular needs when it comes to the logistics of training seminars. Another benefit for us is that communicating directly with legal professionals means we can better ensure that they understand how to use CSEL's research accurately and effectively.

As we neared the end of our grant for the Dissemination Project for Women, Comic

Relief invited us to apply for new funding. We had evidence from the first project that our model of training seminars, supported by our programme of research and publication, is a good way to bridge the gap between theory and practice and pass on useful information to people who can use it to help vulnerable women and men seeking asylum get a fairer hearing for their claims – to help them use CSEL's research evidence in their practice.

Evidence into Practice began in February 2013 with a first phase of research and development, looking at the best content for the training, and how to deliver it to busy asylum lawyers. This R&D phase was also a good opportunity to look at the new research we've published in the last year, and how that can be incorporated into our training. In light of the memory review (see p.13), we realised that we have a wider context – of the unreliability of memory in general – within which to present our discrepancies and disclosure papers. This doesn't alter the main focus of our training, but helps us to show how CSEL's work is helping to expand, indeed, to build the broader evidence base which boosts the credibility of individual research papers.

The new project will require that we develop new relationships with law centres, individual lawyers and law firms around the UK. This means entering a new world for CSEL, and we're grateful to our supporters and friends for helping us take the first steps. I hope to run the first seminars from May 2013, and look forward to reporting on the successes and challenges of this new project as we go forward.

If you would like us to train your law practice or charity, please get in touch with me (see contact details on the back page).



Making Change in the Dutch Asylum System

By Evert Bloemen, MD

As medical doctor specialising in the health problems of asylum seekers and refugees, I work for both for [Pharos](#) (the National Knowledge and Advisory Centre on Migrants, Refugees and Health Care Issues) and for [iMMO](#) (Netherlands Institute for Human Rights and Medical Assessment).

Over the last 10 years I have carried out a lot of training in refugee health issues for non-medical professionals, including immigration officers from the Immigration and Naturalization Department (IND) of the Netherlands, and immigration lawyers. I often make use of CSEL's papers in my training seminars; because the research focuses on asylum seekers and how their mental health problems affect their ability to offer a clear account of their experiences, it is very useful to illustrate and teach about the mistaken ideas that legal professionals often have on human behavior and memory.

In my work as staff member of iMMO I supervise medical doctors and psychologists who write expert reports for people seeking asylum, using supporting medical and psychological evidence. These reports create counterweight to the credibility challenges raised by the IND. Our work is based both on the [Istanbul Protocol](#), and also on the findings of CSEL research. In this work, I have found CSEL's research on trauma and autobiographical memory, inconsistency, and barriers to disclosure of sexual violence and other sensitive information extremely helpful in expanding lawyers' understanding of how psychological processes influence memory.

The research has also played an important role in supporting demands for asylum policy to give more attention to medical and psychological issues, and has helped to improve asylum decision making. In the Netherlands, as elsewhere in Europe, medical and psychological knowledge and tools historically were little used in the process of refugee status determination. Physical scars, medical and psychological

complaints as well as accompanying behavioral and socio-cultural problems are often not examined. The asylum authorities appeared not to consider the possible relationship of these health problems with experiences of violence and torture. CSEL's research makes clear that special attention is needed for asylum seekers with mental health problems precisely because the problems arising from these reasons for fleeing – and seeking protection – interfere with a person's ability to give a coherent asylum claim. In 2006, a group of psychologists evaluated medico-legal reports asking the question: *Are mental health problems interfering with an applicant's ability to render a coherent and consistent account in the asylum procedure?* Their findings, the case law and subsequent lobbying forced the IND to focus more on psychological issues. Now, since 2010 all asylum seekers in the Netherlands are offered a medical examination. This examination is conducted by a nurse within a few days of arrival, with follow up by a medical doctor where indicated. It aims to determine whether the asylum seeker is physical and mentally able to start the asylum process, and is concluded with a report advising of any medical and psychological barriers to making a claim for protection. Barriers are found in almost 40% of examinations. In reaching a decision on a claim for asylum, the IND must explain how they considered these barriers. This medical advice is an important step in the identification of vulnerable asylum seekers and protects them from being processed in the usual way – i.e. with disbelief, and a focus on inconsistency and incoherence.



Pic: Matthew, flickr.com

CENTRE FOR THE STUDY OF EMOTION AND LAW

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For the Year Ended 31 March 2013

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